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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,570	01/11/2002	Raj Jhanwar	MS#164036.2 (4933.1)	9456
321	7590	07/18/2006	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			FOWLKES, ANDRE R	
			ART UNIT	PAPER NUMBER
			2192	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/044,570	Applicant(s) JHANWAR ET AL.	
	Examiner Andre R. Fowlkes	Art Unit 2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16, 27-34 and 36-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 27-34 & 36-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/20, 4/13 &amp; 2/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is in response to the amendment filed 4/18/06.
2. Claims 1-16, 27-34 & 36-42 are pending. Claims 1, 27, 38 and 40-41 have been amended.

#### ***Claim Rejections - 35 USC § 112***

3. The rejection of claims 40-41, under 35 U.S.C. 112, is withdrawn in view of applicant's amendment.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16, 17-34 & 36-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Albright, U.S. Patent Application No. 6,110,228 (AAPA).

As per claim 1, Albright discloses **a method for dynamically updating an operating system component prior to installation of the operating system component on at least one destination machine, comprising** (col. 1:35-40, "The

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computer programs comprising the remote location operating system and application programs will be changed from time to time as improvements are added to the programs and as programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-53, "In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility"), **said method comprising:**

**- identifying update content related to the operating system component, initiated from one or more installation media** (Albright col. 1:14-16 discloses that a customer, responsible for dynamically identifying update content, can be a user or a microcomputer terminal (comprising installation media) or an information system support facility (i.e. installation media)), **before installing the operating system component on the destination machine from one or more installation media, said operating system component being stored on one or more installation media and being adapted for installation on the destination machine from the one or more installation media** (col. 2:58-63, "the front end permits the customer to specify a range of operations, including service research (i.e. identifying update content), requesting service, applying service, providing fixes, and installing serviced product or fixes at the remote location. A service machine at the central site performs the requested service, and the results are provided back to the customer", and Albright discloses at col. 1:41-43 that "One method is to completely substitute an older program (i.e. operating system

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component) with a new version of the same program.” In this case, the new version of the program is created by updating the old version of the program, prior to the installation of the new program.),

**- obtaining the identified update content from one or more update media, said media being remote from the destination machine** (col. 2:47-53, “In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility”),

**- merging the update content with the operating system component stored on the installation media to create an updated operating system component before installing the updated operating system component on the destination machine** (col. 2:47-53, “In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code (i.e. a updated operating system component) back from the software maintenance facility”),

**- Installing the updated operating system component on the destination machine** (col. 2:47-53, “In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and

receive updated executable code (i.e. a updated operating system component) back from the software maintenance facility”).

As per claim 2, the rejection of claim 1 is incorporated and further, Albright discloses that **obtaining update content from one or more media remote from the destination machine via a network** (col. 2:26-31, “The fixes might be obtained, for example, as copies of code changes recorded onto magnetic tape or disk. Alternatively, the changes might be obtained over telecommunication lines such as through modem connections. Changes might also be received directly over the network to which the remote site is connected”).

As per claim 3, the rejection of claim 2 is incorporated and further, Albright discloses that **the network is the Internet** (col. 2:26-31, “The fixes might be obtained, for example, as copies of code changes recorded onto magnetic tape or disk. Alternatively, the changes might be obtained over telecommunication lines such as through modem connections (i.e. Internet). Changes might also be received directly over the network to which the remote site is connected”).

As per claim 4, the rejection of claim 1 is incorporated and further, Albright discloses that **the update content includes at least one file** (col. 1:35-40, “The computer programs comprising the remote location operating system and application programs (i.e. file) will be changed from time to time as improvements are added to the

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programs and as programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-53, "In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility").

As per claim 5, the rejection of claim 1 is incorporated and further, Albright discloses that **the update content includes a patch** (col. 1:35-40, "The computer programs comprising the remote location operating system and application programs (i.e. file) will be changed from time to time as improvements are added to the programs and as programming errors, typically referred to as "bugs" (i.e. patches), are found and fixed").

As per claim 6, the rejection of claim 5 is incorporated and further, Albright discloses that **the patch modifies the operating system component on the installation media prior to installation on the destination machine** (col. 2:47-53, "In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility").

As per claim 7, the rejection of claim 1 is incorporated and further, Albright disclose that the update content includes **a driver for controlling hardware on the destination machine** (col. 2:58-63, "the front end permits the customer to specify a range of operations, including service research, requesting service, applying service, providing fixes, and installing serviced product (i.e. drivers) or fixes at the remote location. A service machine at the central site performs the requested service, and the results are provided back to the customer").

As per claim 8, the rejection of claim 1 is incorporated and further, Albright discloses that **identifying the update content comprises:**

- **analyzing hardware or software or both on the destination machine** (col. 2:58-63, "the front end permits the customer to specify a range of operations, including service research (i.e. analyzing hardware or software), requesting service, applying service, providing fixes, and installing serviced product or fixes at the remote location. A service machine at the central site performs the requested service, and the results are provided back to the customer").

As per claim 9, the rejection of claim 8 is incorporated and further, Albright discloses **one or more computer readable media having computer-executable instructions for performing the method recited** (col. 1:35-40, "The computer programs comprising the remote location operating system and application programs will be changed from time to time as improvements are added to the programs and as



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programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-53, "In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility").

As per claim 10, the rejection of claim 1 is incorporated and further, Albright discloses that **the operating system component comprises operating system software or application program software or both** (col. 1:35-40, "The computer programs comprising the remote location operating system and application programs will be changed from time to time as improvements are added to the programs and as programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-53, "In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility").

As per claim 11, the rejection of claim 1 is incorporated and further, Albright discloses that **merging the update content with the operating system component comprises one or more of the following: patching, replacing, and adding to the operating system component on the one or more installation media** (col. 1:35-40, "The computer programs comprising the remote location operating system and

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application programs will be changed from time to time as improvements are added to the programs and as programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-53, "In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility").

As per claim 12, the rejection of claim 1 is incorporated and further, Albright discloses **extracting at least one file from the update content during the installation of the operating system component** (col. 1:35-40, "The computer programs comprising the remote location operating system and application programs will be changed from time to time as improvements are added to the programs and as programming errors, typically referred to as "bugs", are found and fixed (i.e. extracted)", and col. 2:47-53, "In accordance with the invention, a computer network system includes a software maintenance facility at a central site that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility").

As per claim 13, the rejection of claim 1 is incorporated and further, Albright discloses that **pre-processing the update content in preparation for installation** (col. 1:35-40, "The computer programs comprising the remote location operating system and application programs will be changed from time to time as improvements are added

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to the programs and as programming errors, typically referred to as "bugs", are found and fixed", and col. 2:47-53, "In accordance with the invention, a computer network system includes a software maintenance facility at a central site (pre-processes the update content) that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility").

As per claim 14, the rejection of claim 1 is incorporated and further, Albright discloses that **the operating system component comprises one or more files wherein installing the updated operating system component on the destination machine comprises:**

- **searching the update content for each of the files** (col. 2:58-63, "the front end permits the customer to specify a range of operations, including service research (i.e. searching for files), requesting service, applying service, providing fixes, and installing serviced product or fixes at the remote location. A service machine at the central site performs the requested service, and the results are provided back to the customer"),

- **searching the one or more installation media for each of the files not found in the update content** (col. 2:58-63, "the front end permits the customer to specify a range of operations, including service research (i.e. searching for files), requesting service, applying service, providing fixes, and installing serviced product or

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fixes at the remote location. A service machine at the central site performs the requested service, and the results are provided back to the customer”).

As per claim 15, the rejection of claim 1 is incorporated and further, Albright discloses **specifying registry to automate installation of the updated operating system component** (col. 1:35-40, “The computer programs comprising the remote location operating system and application programs will be changed from time to time as improvements are added to the programs and as programming errors, typically referred to as “bugs”, are found and fixed”, and col. 2:47-53, “In accordance with the invention, a computer network system includes a software maintenance facility at a central site (pre-processes the update content) that operates with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility”).

As per claim 16, the rejection of claim 1 is incorporated and further, Albright discloses **one or more computer readable media having computer-executable instructions for performing the method recited** (col. 1:35-40, “The computer programs comprising the remote location operating system and application programs will be changed from time to time as improvements are added to the programs and as programming errors, typically referred to as “bugs”, are found and fixed”, and col. 2:47-53, “In accordance with the invention, a computer network system includes a software maintenance facility at a central site (pre-processes the update content) that operates

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with a customer interface through which a customer at a remote location can request service and receive updated executable code back from the software maintenance facility”).

As per claims 27-34 and 36-37, this is a computer readable media version of the claimed method discussed above, in claims 1-11 and 13, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Albrights system for automatically transitioning files among computer systems (col. 1:35-2:63).

As per claims 38-39, this is a system version of the claimed method discussed above, in claims 1 and 10, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Albrights system for automatically transitioning files among computer systems (col. 1:35-2:63).

As per claims 40-42, this is another method version of the claimed method discussed above, in claims 7 and 11, wherein all claimed limitations have also been addressed and/or cited as set forth above. For example, see Albrights system for automatically transitioning files among computer systems (col. 1:35-2:63).

### ***Response to Arguments***

5. Applicants arguments have been considered but they are not persuasive.

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*In the remarks, the applicant has argued substantially that:*

1) The Albright patent teaches away from the present invention by disclosing that a service, such as updating an operating system component is performed after the operating system component is installed, while claim 1 requires that the update content related to the operating system component is identified and installed prior to installing the operating system components, at p. 9:15-25 and 10:15-22.

*Examiner's response:*

1) The examiner disagrees with applicant's characterization of the applied art. Albright discloses at col. 1:41-43 that "One method is to completely substitute an older program with a new version of the same program." In this case, the new version of the program/operating system component is created by updating the old version of the program/operating system component, prior to the installation of the new program/operating system component.

*In the remarks, the applicant has argued substantially that:*

2) The Albright patent does not disclose that the installation media initiates the identification and installation of an operating system update component, at p. 9:19-25 and 10:18-20.

*Examiner's response:*

2) The examiner disagrees with applicant's characterization of the applied art. The applicant uses Albright col. 2:54-57 to argue that the customer/user initiates a request for service. Albright 2:54-57 discloses that "the first processing step being with the receipt of customer system required changes in the form of a service request."

However, Albright col. 1:14-16 discloses that "a customer can comprise a user, or a microcomputer terminal (comprising installation media) or an information system support facility (i.e. installation media.)"

*In the remarks, the applicant has argued substantially that:*

3) Albright does not disclose initiating the dynamic update of the operating system, at p. 10:3-18.

*Examiner's response:*

3) The examiner disagrees with applicant's characterization of the applied art. The applicant uses the Albright abstract to argue that the customer/user initiates a request for service in a fashion that is not dynamic. The Albright abstract discloses that "A customer initiates a service request" However, Albright col. 1:14-16 discloses that the microcomputer terminal or an information system support facility can initiate an update in a dynamic manner.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre R. Fowlkes whose telephone number is (571) 272-3697. The examiner can normally be reached on Monday - Friday, 8:00am-4:30pm.

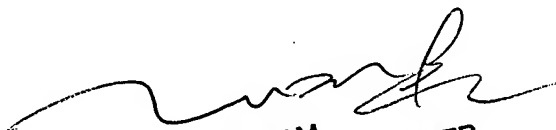
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571)272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARF



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